

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 419 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA
and
Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

KASHIBEN WD/O. MATHURBHAI KALIDAS

Appearance:

MS MAYA DESAI for MR MD PANDYA for Petitioner
MR SANDIP C SHAH for Respondent No. 1
NOTICE SERVED for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA
and
MR.JUSTICE H.K.RATHOD

Date of decision: 15/02/2000

ORAL JUDGEMENT

The findings of the Motor Accident Claims

Tribunal, Vadodara recorded on 23rd April, 1985 are under challenge in this appeal. The Motor Accident Claims Tribunal allowed the compensation of Rs. 54,500/- as against the claim of Rs. 1,25,000/- with interest thereon at the rate of 6% p.a. from the date of the application till the payment or realization with proportionate costs.

2. The facts giving rise to this appeal are as under:

The claimant No. 1 is the widowed mother of the deceased Vinodbhai whereas claimants Nos. 2 and 3 are the school going brothers of the deceased. The deceased was unmarried and he was serving in the Gujarat Electricity Board at Vadodara and was earning Rs.690.00 per month as salary. He was the only earning member in the family and the applicants were maintained by him. In the evening of 13th September, 1982, at about 5.30 p.m., when the deceased had just boarded the local ST Bus bearing No. GTH 8537 from Race Course Bus Stop and while he was still on the foot board of the bus, the driver who was driving the bus suddenly drove it at a very fast speed and while negotiating 90 degree turn on the road, at a very short distance ahead of Race Course Bus Stop, deceased Vinodbhai was thrown out of the bus. He sustained serious injuries on different parts of his body. He was shifted to the hospital where he succumbed to his injuries on the same night. It was alleged that the driver of the bus was rash and negligent in driving the bus and it was on account of rashness and negligence on the part of the driver of the bus that the deceased Vinodbhai fell down from the bus, sustained injuries and expired.

3. In the written statement, case of the opponents was that the driver was not rash or negligent in driving the bus. The stand in the written statement was that the deceased Vinodbhai had tried to board the bus while it was in motion and he failed to have grip over the rod of the bus at the entry gate on account of which he fell down on the road and sustained injuries. It was, thus, pleaded that the deceased Vinodbhai himself was negligent and on account of his negligent act, that he fell down and sustained injuries. The contributory negligence of Vinodbhai in the alternative was also set up in the written statement. Quantum of damages was stated to be exorbitant.

4. The Tribunal found that it was on account of composite negligence of the bus driver and the conductor

that the deceased was taken in the over crowded bus. He had to stand on the foot step of the board of the bus. The tribunal further found that the driver was negligent while negotiating the bus at 90 degree curve on the road on account of which the deceased fell down and sustained injuries. The tribunal repelled the plea that the deceased was in any way negligent.

5. The compensation determined by the tribunal was only Rs. 54,500/-.

6. We have heard the learned counsel for the appellant and the respondents and have also examined the judgment under appeal. The learned counsel for the appellant has argued that the driver or the conductor of the bus was not negligent and that because the deceased was attempting to board the bus while already it was in motion and was over crowded that he could not have grip over the rod near the entry gate and he fell down. We are unable to accept this contention. The tribunal has already taken into consideration the evidence of the bus conductor and the bus driver and also the evidence of one independent witness Baldev Shankarbhai who was travelling in the said bus and who occupied the seat near the entry gate of the bus. His statement was duly considered by the Tribunal and relevant portion has been incorporated in the judgment of the tribunal where the cross examination as well as the examination in chief was shortly reproduced. We have examined the statement of this witness in examination in chief as well as in the cross examination. He was hardly interested with the cause of the claimants. He is neither related to the deceased nor in any manner was interested with the deceased or his family members. He was an independent witness and from his statement, it could safely be concluded that the deceased was not attempting to board the bus while it was in motion, rather, it shows that the deceased had boarded the over crowded bus and was on the foot step on the entry gate and could not enter further because of the over crowd in the bus. Likewise, this witness has stated the manner in which the driver negotiated the 90 degree turn in rash and negligent manner. Naturally, as against this, the bus conductor and the bus driver can safely be said to be highly interested witnesses. Moreover, the contradictions in their statement were high lighted by the tribunal in its judgment. The driver could not have seen in the over crowded bus in what manner the deceased was standing and where he was standing. Since the bus conductor gave signal to the bus driver to move the bus by ringing the bell, the driver had no option but to move the bus It is

also in evidence that the bus conductor was busy in issuing tickets inside the bus. In the over crowded bus in which the deceased was standing uncomfortably and unsecured on the first step of the entry gate. The Conductor should have either stopped the bus or should asked the driver to stop the bus or should asked the deceased not to travel in that manner. Likewise, negligence of the driver of the bus is also there which is established from the statement of the witness Baldevbhai Shankarbhai, an independent witness. Since it is not borne out from the evidence on record that the deceased was attempting to enter the running bus or the bus while in motion, the negligence on his part cannot be attributed or upheld. The findings of the tribunal that the accident took place on account of composite negligence of the driver and conductor therefore require no interference.

7. On the quantum of compensation, very lenient view has been taken by the tribunal and a sum of Rs. 54,500/ has been awarded as compensation. The interest is also on the very lower side at the rate of 6% p.a. In these circumstances, we are not impressed with the arguments of the learned counsel for the appellant that the dependency benefits were wrongly calculated by the Tribunal. The Tribunal has taken a very lenient view while calculating the monthly income of the deceased Vinodbhai. Thus, after looking to the calculation of compensation as contained in the judgment under appeal, we are not inclined to interfere with the ultimate finding of the tribunal that the applicant No. 1 widowed mother of the deceased is entitled to Rs. 54,500/- as net compensation.

8. It was argued that the brothers of the deceased are not entitled to any compensation. The Tribunal has already rejected the claim of the claimants nos. 2 and 3 and the compensation was granted only to the applicant No.1 namely widowed mother of the deceased. As such, we donot see any merit in this appeal which is liable to be dismissed and is hereby dismissed with no order as to costs.

15.2.2000. (D.C.Srivastava,J.)

(H.K.Rathod,J.)

Vyas